



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Phillip C. Clarke Electrical Contractor Inc.
File: B-226506; B-226594
Date: June 25, 1987

DIGEST

1. An agency has a compelling reason to cancel an invitation for bids when specifications are inadequate in not setting forth a realistic delivery schedule and where certain other required specifications and drawings required by state and local authorities were not incorporated in the Invitation for Bids.
2. A contract may not be awarded with the intent to change, immediately after award, specifications that clearly do not meet the government's needs.
3. The government does not award a contract merely by furnishing the bidder with a contract number, needed to obtain bonding, since such information does not indicate a clear, unconditional acceptance of the offer.

DECISION

Phillip C. Clarke Electrical Contractor Inc., protests the Defense Mapping Agency's cancellation of invitation for bids (IFB) No. DMA800-87-B-0009 and the resolicitation under request for proposals No. DMA800-87-R-0051. The solicitation called for the installation of a traffic light where it intersects with a crosswalk that is part of the agency's property in Montgomery County, Maryland. The protester seeks award of the contract as the low bidder under the first solicitation.

We deny the protest.

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The agency issued the IFB on January 5, 1987, and received two bids on the February 4 opening date. Clarke appeared to be the low bidder and was so notified by telephone on February 17 after the agency rejected the other bid as non-responsive. At a pre-construction conference on February 24, however, the protester indicated that it could not meet the 45-day schedule for completion of the contract following notice to proceed. Clarke advised the agency that some of the materials had a procurement lead time of 8-to-10 weeks and indicated that 18 weeks would be required to procure a local area unit, which is the controller or switching device for the traffic signal. During the conference, the protester also indicated that the specifications were incomplete and did not include many of the specifications required by Montgomery County and by the State of Maryland.

Following the conference, the contracting officer confirmed that suppliers could provide the poles and anchor bolts in 8-to-10 weeks, but that the local area unit indeed would require approximately 18 weeks to procure. As a result, the contracting officer determined that the delivery schedule set forth in the IFB was impossible to meet and that the specifications were inadequate. Therefore, the contracting officer canceled the IFB on February 27. He revised the specifications to include a new schedule, to provide for furnishing by the government of major long-lead time materials, and to include additional state and local specifications and drawings, and issued the RFP on March 20. Clarke did not submit a proposal under the revised solicitation.

The contracting officer states that at no time before bid opening did Clarke notify the government of a possible defect in the IFB. The agency believes Clarke wanted to have the contract awarded to itself, with correction of specification deficiencies and the delivery schedule after that. This is consistent with Clarke's position that the initial IFB should be reinstated and an award made to it.

Because of the potential adverse impact on the competitive system of canceling an IFB after prices have been exposed, a contracting officer must have a compelling reason for such action. Federal Acquisition Regulation (FAR), 48 C.F.R. § 14.404-1(a) (1986). Contracting officials have broad discretion to decide whether or not compelling circumstances for cancellation exist, and our Office's review is limited to considering the reasonableness of the exercise of that discretion. Professional Carpet Service, B-212442 et al., Oct. 24, 1983, 83-2 CPD ¶ 483. It is incumbent upon the protester to establish that the contracting officer abused this discretion. A&C Building and Industrial Maintenance Corp., B-205259, Dec. 15, 1981, 81-2 CPD ¶ 478. Generally,

the use of inadequate specifications provides a cogent and compelling reason for invitation cancellation. Pacific Scientific Co., Gardner - Neotec Division, B-208193, Jan. 18, 1983, 83-1 CPD ¶ 61.

Here, the contracting officer determined that the solicitation should be canceled due to inadequate specifications. The contracting officer also believed that the government could obtain lower prices if the long-lead time materials were provided as government-furnished property and that competition would be increased if a realistic delivery schedule were incorporated into the solicitation. The record also indicates that seven specifications required by Montgomery County were omitted from the IFB, as well as two detailed specifications required by the State of Maryland. Three additional drawings relating to traffic signal installation, required by state and local authorities, also were omitted from the IFB.

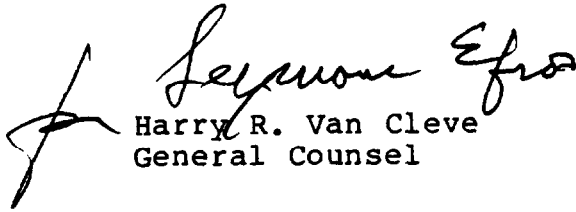
In view of the above, we find that the agency here had a compelling reason to cancel the IFB. Specifications are inadequate when they do not state the government's actual needs, Custodial Guidance Systems, Inc., B-206988, July 6, 1982, 82-2 CPD ¶ 19, and these clearly did not. Therefore, neither reinstatement of the original IFB nor an award to Clarke with the intent to modify the contract would be proper. American Telephone Systems, B-220087.3, June 19, 1986, 86-1 CPD ¶ 562.

Clarke also appears to be arguing that it had already received the award because the contracting officer furnished the firm with a contract number. The contracting officer states that the number was only provided because Clarke indicated that one was needed in order for it to secure required performance and payment bonds. The contracting officer also indicates that Clarke was told that providing the contract number did not constitute an award and that the bid and bonds needed to be reviewed before that time.

The FAR, 48 C.F.R. § 14.407-1(a), provides that a contract is effectuated by written notice of award. Here there was no such written notice and there was no reason for Clarke to conclude that it had received an award. Oral advice or a request for information of this type is not sufficient to give rise to a binding contract, since the government's acceptance of an offer must be clear and unconditional.

See Mil-Base Industries, B-218015, Apr. 12, 1985, 85-1 CPD
¶ 421.

The protest is denied.


Harry R. Van Cleve
General Counsel